

EXECUTION COPY

AMENDED AND RESTATED POWER PURCHASE AGREEMENT

This AMENDED AND RESTATED POWER PURCHASE AGREEMENT (the "Agreement") is made and entered into as of the date set forth below, by and between the DEPARTMENT OF WATER RESOURCES with respect to its responsibilities pursuant to the Department Act (as hereinafter defined) regarding the Fund (as hereinafter defined) separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (in such capacity, the "Department") and the KINGS RIVER CONSERVATION DISTRICT (the "Seller") (each individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the Seller and the Department entered into a Power Purchase Agreement dated December 31, 2002 (the "Original Agreement"), and now desire to amend and restate the Original Agreement in its entirety as set forth herein;

WHEREAS, the Department is authorized under the Department Act to contract with any person, local publicly owned electric utility, or other entity, upon those terms, limitations, and conditions as it prescribes, for the purchase of power on such terms and for such periods as the Department determines and at such prices the Department deems appropriate, taking into account, among other things, the intent to achieve an overall portfolio of contracts for energy resulting in reliable service at the lowest possible price per kilowatt-hour, and

WHEREAS, the Seller is authorized by a Resolution of the Board of Directors of the Kings River Conservation District to enter this agreement and by the statutes of the State of California to establish, finance, purchase, own, operate, acquire, or construct generating facilities and to sell the output therefrom to the Department, subject to the terms of this Agreement and the such statutes,

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. Unless otherwise defined herein or in any appendix hereto, the following terms shall have the respective meanings in this Agreement:

"Adjusted Capacity Payment" has the meaning set forth in Section 4.01.

"Agreement" shall mean this Amended and Restated Power Purchase Agreement and the appendices hereto, which are hereby incorporated herein by reference.

“Ambient Facility Output Table” means the table to be created as set out in section 5 of Appendix C that will relate expected Facility output (in MW) to ambient temperature, with Rated Capacity as the expected output at Contract Conditions.

“ASME” means the American Society for Mechanical Engineers.

“Authorized Representative” shall mean the person or persons designated in Appendix A as having full authority to act on behalf of a Party for all purposes hereof.

“Availability Notice” has the meaning set forth in Section 2.05(c).

“Billing Address” means the billing address specified in Appendix A or as otherwise specified by the Department.

“Bond Purchase Agreement” means the agreement between or among the Seller and the underwriter(s) for the purchase of Initial Bonds.

“Bond Sale Time” means the hour that the Seller expects to sign the Bond Purchase Agreement.

“Bonds” means any (a) Initial Bonds, or (b) any bonds, notes or other indebtedness issued by the Seller for any other purpose in connection with the Facility, including refunding bonds, the terms and conditions of which are approved by the Department as provided herein.

“BTU” means British Thermal Units.

“Business Day” means any Day other than a Saturday or Sunday or a United States holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City.

“CAISO” means the California Independent System Operator or any successor thereto.

“CAISO Participating Generator Agreement” means the agreement to be executed by the Seller and CAISO to establish the terms and conditions on which the Seller and CAISO will discharge their respective duties and responsibilities under the CAISO Tariff.

“CAISO Tariff” means the CAISO tariff on file with the FERC and in effect from time to time.

“Capacity Payment” means the monthly payment that the Department makes to the Seller as such payment is calculated pursuant to Section 2.02(a).

“Commercial Operation” means the Facility has achieved a status of operation that is acknowledged by the Department through the Department’s acceptance of the Seller’s certification that all the requirements of commercial operation of the Facility have been achieved in accordance with Appendix C hereto.

“Commercial Operation Date” means the date on which the Department accepts the Seller’s certification that all the requirements of commercial operation of the Facility have been

achieved in accordance with Appendix C hereto. Such acceptance shall occur within ten (10) Business Days of the Department's receipt of a complete Performance Test Report. The determination as to whether a Performance Test Report will be deemed "complete" shall be within the Department's sole discretion.

"Contract Conditions" means conditions that satisfy the requirements of the International Standards Organization standard conditions of 59 degrees Fahrenheit, sixty (60) percent relative humidity and barometric pressure corrected to site elevation.

"Coordinating Committee" means a committee composed of authorized representatives of both the Department and the Seller which shall meet at least annually to establish or revise the Operating Procedures.

"CPUC" means the Public Utilities Commission of California or any successor thereto.

"Day" means the period beginning 12:00 midnight and ending on the following 12:00 midnight (Pacific Time).

"Defaulting Party" shall have the meaning set forth in Section 7.01.

"Delivery Point" means the point of interconnection on the transmission grid at the PG&E Malaga substation.

"Department Act" means ABX1 1 (Chapter 4 of the Statutes of 2001, First Extraordinary Session), as amended by ABX1 31 (Chapter 9 of the Statutes of 2001, First Extraordinary Session) codified as Section 80000 *et seq.* of the Water Code.

"Department Commitment Time" means the time the Bond Purchase Agreement is executed and delivered by the parties thereto; provided that the Department Commitment Time shall be extended until the Seller has (i) entered into the EPC Contract, (ii) entered into a Management Agreement with respect to its obligations hereunder, and (iii) established the Final Terms and communicated them to the Department in accordance with Section 3.05(a) hereof.

"Dispatch" means the right of the Department to control or direct the delivery of Energy from the Facility, other than by submission of a Schedule to CAISO, in accordance with the provisions of this Agreement. An instruction from the Department to the Seller to bid into the CAISO Ancillary Services Market shall be considered a Dispatch by the Department.

"Dispatched Energy" means the amount of Energy actually generated for delivery by the Seller from the Facility pursuant to a Dispatch by the Department, as measured at the Electricity Metering Point.

"Debt Service" shall have the meaning set forth in Section 2.02(a).

"EA" shall have the meaning set forth in Section 4.01(a) hereof.

"Electricity Metering Point" means the location on the high side of the Facility's transformer at which the Seller maintains meters and metering devices used to measure the delivery and receipt of Energy for payment purposes.

"Energy" means electric energy produced by the Facility in accordance with the Department's Schedule or Dispatch and measured in MW-hrs at the Electricity Metering Point.

"EPC Contract" means a contract by and between the Seller and a creditworthy contractor for the engineering, procurement and construction of the Facility at a fixed price in form and substance reasonably satisfactory to the Department and the Seller.

"Event of Default" shall have the meaning set forth in Section 7.01.

"Excused Hours" means those hours for which Seller is excused from its contractual obligations to deliver Energy to the Department due to Scheduled Maintenance Outage pursuant to Section 3.02 of this Agreement.

"Equivalent Fuel Payment" shall have the meaning set forth in Section 2.04.

"Facility" means the natural gas fired simple-cycle combustion turbine generation station to be located in the Kings River Conservation District, consisting of two GE LM6000 gas turbine packages with other equipment necessary for the generation and transmission of Energy to the Delivery Point. The Facility shall be capable of and shall have all required permits necessary for 2,500 hours of operations per year.

"Facility Cost" means the fixed EPC Contract price for the Facility, all verified development costs paid for by Seller prior to the Department Commitment Time (excluding all development costs paid pursuant to the Implementation Agreement) and any development costs approved by the Department expected to be paid for by Seller (excluding all development costs paid pursuant to the Implementation Agreement).

"Failed Unit Start" shall mean that (i) a Unit start sequence was initiated to meet a Dispatch or Schedule; and (ii) the Unit failed to reach the required Dispatch or Schedule level within 30 minutes (or 10 minutes in the case of an emergency after instruction by the Department).

"FERC" means the Federal Energy Regulatory Commission or any successor thereto.

"Final Terms" means the principal amount(s), interest rates(s), redemption provisions and premiums and other terms and provisions of the Initial Bonds which shall be set forth in the Bond Purchase Agreement which interest rate(s) shall not be greater or principal amount(s), redemption provisions and premiums and other terms and provisions not materially different than the Proposed Final Terms.

"Fixed O&M" shall have the meaning set forth in Section 2.02(a).

"Force Majeure" means an event or circumstance which prevents one Party from performing its obligations hereunder, which event or circumstance was not reasonably foreseeable as of the date of this Agreement, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided, including, but not limited to: shortages of materials or supplies (except if caused by the Seller's failure to maintain sufficient inventories and stores of spare parts), strikes or labor disruptions (except strikes or

labor disputes resulting from unsafe working environment or unfair labor practices), interruptions of fuel supply, interruption of water supply or interruption of transmission, damages or breakdown of machinery, drought, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to obtain and maintain applicable governmental approvals from a governmental authority resulting solely from the enactment, repeal and amendment in any applicable law or in the interpretation or application of any applicable law by such governmental authority, in each case occurring after the effective date hereof, or the failure of such governmental authority to comply with statutorily mandated permitting time requirements. Force Majeure shall not include any events such as, but not limited to, events arising from (a) the failure to operate and maintain the Facility in accordance with Prudent Industry Practices; (b) economic factors including the price of services or materials, (c) the inability to obtain financing, or (d) litigation.

“Forced Outage” means an unscheduled removal of a Unit or Facility from synchronized operation, or inability to restart following a failed start, or anytime a Unit or the Facility is unavailable other than for a Scheduled Maintenance Outage.

“Fuel Manager” means the Department when it performs the services of Authorized Agent (as such term is defined in the utility tariff) in the Pacific Gas & Electric utility system.

“Fund” means the Department of Water Resources Electric Power Fund established by Water Code Section 80200.

“Gas Index Price” shall have the meaning set forth in Section 2.04.

“Governmental Approval” means, without limitation, any authorization, consent, approval, license, ruling, permit, exemption, variance, entitlement, order, judgment, decree, declaration of or regulation by any Governmental Authority relating to the acquisition, ownership, occupation, construction, start-up, testing, operation or maintenance of the Facility or the execution, delivery or performance of this Agreement.

“Governmental Authority” means any federal, state, local, territorial or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof.

“Guaranteed Availability” means the Target EA set forth in Section 4.01(a).

“Guaranteed Heat Rate” shall be 10,000 Btu/kWh (higher heating value). This value assumes the use of gas compression.

“Heat Rate Test” shall have the meaning set forth in Appendix C.

“Hourly Ambient Capacity” means, for any hour, the MW value from the Ambient Facility Output Table corresponding to the ambient temperature for such hour.

“Implementation Agreement” means the Implementation Agreement, dated December 31, 2002, as may be amended from time to time, among the Seller, the Department, the California Consumer Power and Conservation Financing Authority and the Attorney General of the State.

“Independent Engineer” means a corporation of engineers of nationally recognized standing for skill and for experience with respect to the design, construction and operation of facilities similar to or having like characteristics as the Facility.

“Index Rate” shall mean the Pooled Money Investment Account Earnings Yield Rate as published by the State Controller’s Office, Division of Accounting and Reporting.

“Indenture” shall mean the indenture or trust agreement pursuant to which the Initial Bonds are issued by the Seller.

“Initial Bonds” means bonds, notes or other indebtedness initially issued by the Seller to finance the Facility Cost.

“Invoice Month” means the calendar month immediately following the month in which the Seller provided Rated Capacity and Energy for which an invoice is being issued.

“KW-hr” means kilowatt-hour, a measure of electric energy produced in one hour.

“Law” means any statute, law, rule or regulation imposed by a Governmental Authority, whether in effect now or at any time in the future.

“LDC” shall have the meaning set forth in Section 2.06.

“Management Agreement” means any agreement(s) executed by the Seller in form and substance reasonably satisfactory to the Department and the Seller, pursuant to which one or more creditworthy entities agrees to operate and maintain the Facility on behalf of Seller, and provide major maintenance, transmission, dispatch and other services.

“Major Maintenance Fund” shall have the same meaning set forth in Section 2.02(d).

“Major Milestones” means the dates set forth in Appendix B.

“Monthly Availability Hours” means all hours in a month except for Excused Hours for such month.

“MW” means megawatt, a measure of electric generating capacity.

“MW-hr” means megawatt-hour, a measure of electric energy produced by a one (1) MW source in one hour.

“MW-mo” means megawatt-month, a measure of electric capacity from a one (1) MW source available in one month.

“NERC” means the North American Electric Reliability Council.

“Non-Defaulting Party” shall have the meaning set forth in Section 7.01.

"Operating Procedures" means the procedures pertaining to certain aspects of operation of the Facility established or revised by mutual agreement of the Parties at a meeting of the Coordinating Committee.

"Operating Year" means the twelve-month period commencing on 12:01 a.m. on January 1 of each year and ending on 12:00 a.m. of December 31 of that year during the term of this Agreement; provided, however, that the first Operating Year will be the period commencing on the Commercial Operation Date and ending at 12:00 a.m. of December 31 of that year and the last Operating Year will be the period commencing on 12:01 a.m. January 1 of that year and ending on the date of termination or expiration of the Agreement.

"Party" means the Department or the Seller.

"Priority Long Term Power Contract" shall have the meaning set forth in the Rate Agreement.

"Proposed Final Terms" means the principal amount(s), interest rates(s), redemption provisions and premiums and other terms and provisions of the Initial Bonds as estimated by the Seller and provided to the Department in writing.

"Prudent Industry Practices" means those practices, methods and acts (including but not limited to the generally accepted practices, methods and acts engaged in or approved by the operators of similar electric generating facilities) which at the time that such practice, method or action is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result in a workmanlike manner, consistent with (a) applicable laws and governmental requirements, and (b) reliability, safety, and environmental protection. "Prudent Industry Practices" shall not mean that operator is required to use the optimum practice, method, or act, but only requires the use of acceptable practices, methods or acts generally accepted in the United States in performing its obligations hereunder in accordance with Prudent Industry Practices.

"Purchase Price" means the aggregate monthly payment that the Department makes to the Seller in accordance with Section 2.02 herein.

"Qualified Electric Corporation" means an electrical corporation, as defined by AB 1X, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Corporation and Baa2 or better by Moody's Investor Services and is not on "negative outlook" or "Credit Watch" from either rating agency at the effective date of such Replacement Agreement.

"Rate Agreement" means the Rate Agreement between the Department and State of California Public Utilities Commission ("CPUC") adopted by the CPUC on February 21, 2001 in Decision 02-02-051.

"Rated Capacity" means the power output capability of the Facility or a turbine constituting a part of the Facility, as appropriate, which may change from time to time, expressed in MW, as determined and adjusted to Contract Conditions based on performance tests conducted upon Commercial Operation and periodically thereafter in accordance with Section 2.03 and testing procedures set forth in Appendix C.

“Rated Capacity Test” shall have the meaning set forth in Appendix C.

“Replacement Agreement” means any agreement identical to this Agreement excluding provisions relating to Department’s status as a governmental agency or to the original Commercial Operation Date determined by the Department under this Agreement, together with such additional changes as Seller and Qualified Electric Corporation (as defined herein) shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration.

“Schedule” means the right of the Department to schedule delivery of Energy from the Facility, in accordance with the provisions of the Agreement, pursuant to CAISO scheduling protocols or the protocols of any successor thereto.

“Scheduled Energy” is the amount of energy associated with a Department Schedule.

“Scheduled Maintenance Outage” means an outage that (a) has been coordinated in advance with the Department pursuant to Section 3.02, and (b) is for the purpose of performing work on specific components of the Facility that would limit the power output of the Facility.

“State” means the State of California.

“Successful Unit Starts” shall mean each instance where (i) a Unit start sequence was initiated to meet a Dispatch or Schedule; and (ii) the Unit reached the required Dispatch or Schedule level within 30 minutes (or 10 minutes in the case of an emergency after instruction by the Department).

“Target Rated Capacity” shall mean the Rated Capacity corrected to a curve of capacity versus operating hours (capacity degradation curve) certified by the original equipment manufacturer / architect / engineer / vendor of the Facility, with operating hours for each Unit at the time of the Rated Capacity Test.

“Term” shall have the meaning set forth in Section 2.08.

“Test Heat Rate” shall be the weighted average of the heat rates of the turbines comprising the Facility, which may change from time to time, expressed in Btu/kw-hr (HHV) as determined and adjusted to Contract Conditions based on performance tests conducted upon Commercial Operation and periodically thereafter in accordance with testing procedures as set forth in Appendix C.

“Unit” means each combustion turbine comprising the Facility.

“Variable O&M Payment” means the monthly payment for operations and maintenance costs (if any) related to Energy that the Department makes to the Seller as such payment is calculated pursuant to Section 2.02(b).

“WECC” means Western Electric Coordinating Council.

Section 1.02. Rules of Interpretation. Unless otherwise provided herein: (a) words denoting the singular include the plural and vice versa; (b) words denoting a gender include both genders; (c) references to a particular part, clause, section, paragraph, article, party, exhibit, schedule or other attachment shall be a reference to a part, clause, section, paragraph, or article of, or a party, exhibit, schedule or other attachment to the document in which the reference is contained; (d) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, amendments, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in the document in which the reference is contained; (e) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time; (f) a definition of or reference to any document, instrument or agreement includes an amendment or supplement to, or restatement, replacement, modification or novation of, any such document, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used; (g) a reference to any person includes such person's successors and permitted assigns in that designated capacity; (h) any reference to "dollars" or "\$" shall mean United States dollars unless otherwise specified; (i) any reference to time is a reference to the time then prevailing, whether standard or daylight savings time, in the specified time zone; (j) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or Day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or Day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day); (k) words such as "hereunder," "hereto," "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof; and (l) a reference to "including" means including without limiting the generality of any description preceding such term.

ARTICLE II

PURCHASE AND SALE OF CONTRACT CAPACITY AND ENERGY

Section 2.01. Purchase and Sale of Rated Capacity and Energy. On and after the Commercial Operation Date and for the remaining Term of this Agreement thereafter, the Seller shall provide and make available to the Department, and the Department shall purchase and pay for, Rated Capacity, and if requested by the Department pursuant to this Agreement, Energy, from the Facility at the Delivery Point, and the Department shall pay the Seller the Purchase Price. The Seller shall be responsible for any costs or charges imposed on or associated with the Rated Capacity and Energy up to the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Rated Capacity and Energy or its receipt at and from the Delivery Point.

Section 2.02. Determination of Purchase Price. Commencing on the month in which the Commercial Operation Date occurs, the Purchase Price to be paid by the Department for Rated Capacity and Energy provided under this Agreement shall consist of an aggregate payment equal to the sum of (i) the Capacity Payment, (ii) the Variable O&M Payment, (iii) where applicable, an Equivalent Fuel Payment, (iv) any CAISO charges for transmission services, ancillary services, any control area services and line losses on the Department side of the Delivery Point and (v) any PG&E charges for natural gas supply, transportation or storage that are incurred by the Seller in accordance with Section 2.06 herein. Notwithstanding the foregoing, in no event shall the Department be required under this Section 2.02 to provide any additional funds to the extent that the additional funds would not be required if the Facility had been operated in accordance with accepted industry practices or was not otherwise due to the negligence or misconduct of the Seller or the operator of the Facility. Further, in no event shall any component of the Purchase Price payable by the Department include (a) the cost of any litigation or administrative actions, disputes or challenges with respect to the Facility or this Agreement; or (b) any costs of litigation or administrative actions, disputes or challenges with respect to obtaining and complying with permits for the Facility; provided however, that if the Department, in its sole discretion, determines that such litigation or administrative actions, disputes or challenges with respect to obtaining and complying with permits for the Facility are not the result of the Seller's negligence or misconduct, then the Purchase Price payable by the Department shall include such costs.

(a) Capacity Payment. The Department shall pay the Capacity Payment, on a monthly basis in arrears, regardless of whether the Department requests that the Seller deliver Energy from the Facility. It is understood by the Seller and the Department that the Capacity Payment includes Fixed O&M (as defined below). It is also understood by Seller and the Department that Debt Service on the Initial Bonds includes real property costs for acquiring the site of the Facility. Such Capacity Payment shall be a monthly charge, the Debt Service component of which will be established as of the Department Commitment Time, for each calendar year, based on the following formula, as determined by the Department:

$$\text{Capacity Payment} = \text{Debt Service} + \text{Fixed O\&M} + \text{MM} + \text{SAC}$$

Debt Service = (w) the actual debt service payable on the Initial Bonds on the first day of the second succeeding month; plus (x) amounts required to replenish the Debt Service Reserve Fund to the extent such replenishment is required as a result of a failure by the Department to make payments to Seller that were due and owing under this Agreement; minus (y) interest earnings on amounts held pursuant to the Indenture other than amounts required for rebate obligations or Construction Fund earnings prior to completion of the Facility; minus (z) in the year in which the final maturity of the Initial Bonds occurs, the amount in any reserve fund(s) held under the Indenture which is available for final payment of the Initial Bonds during such calendar year. In addition, the first invoice rendered shall also include Debt Service for the month in which the Commercial Operation Date occurs and the succeeding month (in each case to the extent not paid from capitalized interest).

Fixed O&M = Operation and maintenance expenses as mutually agreed to by the Parties prior to the Department Commitment Time for the first full Operating Year (12 month period). For purpose of calculating the Fixed O&M component of the Purchase Price for the first Operating Year, the Fixed O&M component of the Purchase Price payable each month shall equal $1/12^{\text{th}}$ of the amount agreed upon by the Parties Prior to the Department Commitment Time for a full Operating Year (12 month period). For each subsequent Operating Year, the Fixed O&M shall be automatically increased or decreased by a rate equal to the percentage change in the Consumer Price Index over the previous 12 month period, All Urban Consumers, All Cities as published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI Index") from January 1, 2005. To determine the appropriate escalation, the CPI Index values used shall be those published most recently after each January 1, which values shall be compared with the CPI Index published most recently after January 1, 2005. The adjustment shall be calculated retroactive to January 1 of each year as promptly as possible after the CPI Index is published, and an appropriate retroactive adjustment shall be paid to the Seller with the next monthly Capacity Payment. If the CPI Index or any revision or equivalent of that index ceases to be published by a federal agency, the parties shall replace it with a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute for the CPI Index. Fixed O&M payable by the Department to the Seller also includes a Fixed O&M Contingency in an amount not to exceed 5% of the Fixed O&M for the first full Operating Year (12 month period). In addition, in each Operating Year after the initial funding of the Fixed O&M Contingency in the first full Operating Year, the Department shall pay an additional amount attributable to Fixed O&M Contingency to reflect escalation on the initial Fixed O&M Contingency in accordance with the CPI Index.

MM = Major Maintenance amount determined pursuant to Section 2.02(d) of this Agreement.

SAC = Seller's Administrative Costs. An amount (including insurance and capital improvements) determined pursuant to Section 2.02(e) of this Agreement.

The Parties hereby acknowledge that the Department's obligation to make payments hereunder, including the Capacity Payment, shall not commence until Commercial Operation is achieved. To the extent that the Facility achieves Commercial Operation on a Day other than the first Day of a calendar month and to the extent that the Term ends on a Day other than the last Day of a calendar month, the Department shall pay all components of the Capacity Payment (except for Debt Service) on a pro-rata basis for that month.

(b) Variable O&M. (i) commencing on the Commercial Operation Date, the Department shall pay the Seller the Variable O&M Payment (if any), at a rate expressed as dollars per MWh, for the variable costs of operation and maintenance (which rate shall exclude the costs of backfeed electricity, water and water treatment regeneration which shall be paid based on actual costs incurred by the District) associated with Energy delivered by the Seller from the Facility pursuant to the Department's Schedule or Dispatch, on a monthly basis in

arrears; and (ii) variable cost of operation and maintenance associated with (1) Energy produced during startup or shutdown phases of operation of the Facility in accordance with Section 2.06(d) of this Agreement; (2) energy produced during CAISO emergency dispatch, and (3) Energy produced in response to CAISO dispatch for Ancillary Services. Prior to the Department Commitment Time, the Parties shall mutually agree on the amount of Variable O&M Payment for the first Operating Year. For each subsequent Operating Year, the Variable O&M Payment shall be automatically increased or decreased by a rate equal to the percentage change in the Consumer Price Index over the previous 12 month period, All Urban Consumers, All Cities as published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI Index") from January 1, 2005. To determine the appropriate escalation, the CPI Index values used shall be those published most recently after each January 1, which values shall be compared with the CPI Index published most recently after January 1, 2005. The adjustment shall be calculated retroactive to January 1 of each year as promptly as possible after the CPI Index is published, and an appropriate retroactive adjustment shall be paid to the Seller with the next monthly Capacity Payment. If the CPI Index or any revision or equivalent of that index ceases to be published by a federal agency, the parties shall replace it with a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute for the CPI Index.

(c) Equivalent Fuel Payment. An Equivalent Fuel Payment may apply in certain circumstances as more specifically set forth in Section 2.04 of this Agreement.

(d) Major Maintenance Fund. Prior to the Department Commitment Time, the Department and the Seller shall mutually agree on (1) on the total amount to be funded; (2) the amount of the initial deposit, to be made prior to the beginning of the first Operating Year, to a Major Maintenance Fund. (as defined below) and (3) the amount of annual payments to be made by the Department during the Term of this Agreement, for deposit to the Major Maintenance Fund.

(i) If Seller seeks to further increase the amount to be deposited to the Major Maintenance Fund for any given Operating Year, it shall first obtain the approval of the Coordinating Committee. Seller must present such a request for increase to the Coordinating Committee at least 90 days prior to the start of the next Operating Year. In the event that members of the Coordinating Committee cannot agree on the amount of increase (if any) to the Major Maintenance Fund for any given Operating Year, then the only deposit to be made to the Major Maintenance Fund for that Operating Year will be the amount (if any) mutually agreed upon by the Parties prior to the Department Commitment Time pursuant to Section 2.02(d). Where the members of the Coordinating Committee fail to agree on the amount of increase to the deposit (if any) to the Major Maintenance Fund for any given Operating Year, the Department shall have sole discretion as to the amount (if any) of increase to the Major Maintenance Fund.

(ii) For purposes of this Agreement, the Major Maintenance Fund ("Major Maintenance Fund") is defined as the amount of money that has been set aside for the purpose of performing preventative and predictive Major Maintenance Items (as defined herein) to maintain Facility equipment in proper working order. For purposes of this Agreement, Major Maintenance Items consist of (1) combustor exchanges made as a result of a planned inspection, (2) hot section inspection, repair or replacement using manufacturer's recommended intervals; provided that any repair or replacement is made as a result of a planned inspection, (3) generator inspection and repair; provided that any repair is made as a result of a planned inspection, and (4)

SCR catalyst inspection and replacement. The manufacturer's recommended interval for the combustor exchange is every 16,000-fired hours of operation and for the hot section replacement every 25,000 fired hours of operation.

(iii) Withdrawals by the Seller from the Major Maintenance Fund are to be made based upon the recommended manufacturer's maintenance intervals or other periods required based on actual gas engine inspection and shall be mutually agreed upon by members of the Coordinating Committee. Where the members of the Coordinating Committee fail to agree on the amount of withdrawal to be made by Seller from the Major Maintenance Fund, Seller shall not be authorized to make the withdrawal but may pursue the dispute in accordance with Section 2.02(d)(v) herein.

(iv) Upon expiration or termination of this Agreement, the Department shall be entitled to a refund of a portion of any funds remaining in the Major Maintenance Fund in accordance with the following formula:

$$\text{MM Refund} = \text{MM Balance} \times [1 - (\text{Actual Fired Hours} / 50,000)]$$

Where:

- MM Refund is amount of major maintenance refund to the Department
- MM Balance is the amount of money remaining in the Major Maintenance Fund at the expiration of this Agreement
- Actual Fired Hours equals total fired hours for both Units
- If either Unit undergoes a hot gas replacement during the Term of the Agreement that Unit's Actual Fired Hours shall not be used in the MM Refund formula above and the denominator in the formula shall be changed to 25,000; provided, however, that Seller is only entitled to request a withdrawal from the Major Maintenance Fund for one (1) hot gas replacement for each combustion turbine during the Term of the Agreement.
- Amounts for Major Maintenance of the generator and SCR catalyst shall be funded in the year during which the work is planned to be performed. Any funds not expended for such work shall be deducted from the amount to be deposited in the MM Fund for the following Operating Year. If there are no plans to make a deposit to the MM Fund for the following Operating Year, then all such excess amounts shall be refunded to the Department within 30 days of completion of such work.

(v) Where Seller seeks to be granted authority to withdraw funds from the Major Maintenance Fund but members of the Coordinating Committee fail to grant such authority, the Parties hereby agree to the following dispute resolution process. Seller shall provide the Department with written notice that it is initiating dispute resolution pursuant to this Section 2.02(d)(v). The Parties shall work in good faith to jointly select an Independent Engineer to resolve the dispute and shall complete the selection process within 15 days of

Seller's dispute resolution notice. In selecting the Independent Engineer, the parties shall cooperate in compiling a document that sets forth the scope of work to be performed by the Independent Engineer and which shall require the Independent Engineer to produce a written report with its recommendations and conclusions within 45 days of the date the work was requested from the Independent Engineer. The Independent Engineer's report must make a recommendation in favor of or against the Major Maintenance work requested by Seller and must set forth the dollar amount which, in the opinion of the Independent Engineer, will be necessary to complete such work. The Parties hereby agree to be bound by the decision of the Independent Engineer as set forth in the Independent Engineer's report.

(e) Seller's Administrative Costs. Prior to the Department Commitment Time, the Department and the Seller shall mutually agree on the amount of Seller's Administrative Costs ("SAC") to be funded for the first Operating Year and the Seller shall deliver to the Department a statement that itemizes and sets forth in detail the individual costs that comprise the SAC. Further, the Parties hereby acknowledge that the SAC amount to be agreed upon shall include (1) insurance costs for the first Operating Year and (2) \$50,000 for deposit into a Capital Improvements Fund (the "Capital Improvements Fund") in accordance with Section 2.02(e)(ii) below.

(i) Annual Adjustments: For each subsequent Operating Year, the annual amount of SAC (excluding the amounts for Capital Improvements and insurance, which will be reimbursed on an actual cost basis) shall be automatically increased or decreased by the percentage change in the Consumer Price Index over the previous 12 month period, All Urban Consumers, All Cities as published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI Index") from January 1, 2005. To determine the appropriate escalation, the CPI Index values used shall be those published most recently after each January 1, which values shall be compared with the CPI Index published most recently after January 1, 2005. The adjustment shall be calculated retroactive to January 1 of each year as promptly as possible after the CPI Index is published, and an appropriate retroactive adjustment shall be paid to the Seller with the next monthly Capacity Payment. If the CPI Index or any revision or equivalent of that index ceases to be published by a federal agency, the parties shall replace it with a substantially equivalent index that, after any necessary adjustments, provides the most reasonable substitute for the CPI Index. If Seller seeks an increase in the amount to be funded for Seller's Administrative Costs for any given Operating Year beyond any adjustment attributable to the Consumer Price Index, it shall first obtain the approval of the Coordinating Committee. Seller must present such a request for increase to the Coordinating Committee at least 90 days prior to the start of the next Operating Year. In the event that members of the Coordinating Committee cannot agree on the amount of increase to Seller's Administrative Costs, then the only adjustment to be made for the next Operating Year will be that attributable to the Consumer Price Index. Where the members of the Coordinating Committee fail to agree on the amount of increase to Seller's Administrative Costs to be granted to Seller, Seller may pursue the dispute in accordance with Section 4.06(h) herein.

(ii) Capital Improvements. Seller is entitled to withdraw amounts needed for Capital Improvements (as defined herein) from the Capital Improvements Fund up to a maximum of \$50,000 for each Operating Year; provided, however, that for any single Capital Improvement in excess of \$25,000, Seller shall first obtain the Department's approval. Amounts

withdrawn by Seller from the Capital Improvements fund shall be replenished by the Department in the subsequent Operating Year such that \$50,000 is available for each Operating Year. If Seller seeks to increase the amount to be funded for Capital Improvements for any given Operating Year, it shall first obtain the approval of the Coordinating Committee. In the event that members of the Coordinating Committee cannot agree on the amount of increase to Capital Improvements, then no increase will be made for the next Operating Year. Where the members of the Coordinating Committee fail to agree on the amount of increase to Capital Improvements to be granted to Seller, Seller may pursue the dispute in accordance with Section 4.06(h) herein. For purposes of this Agreement, Capital Improvements shall mean modifications, upgrades or corrections to the Facility as may be reasonably required to improve the economy, safety and quality of the Facility's operations.

Section 2.03. Determination of Rated Capacity. The Rated Capacity will be established by testing and adjustment as follows: Not less than five days prior to anticipated date of commercial operation, and thereafter during the period beginning June 1 and ending June 30 in each year, the Seller will conduct a four hour performance test of the Facility during operations using agreed upon instrumentation, calibrated by the Seller (except the Electric Metering Equipment which will be calibrated in accordance with CAISO Requirements) to determine the maximum MW output of the Facility as measured at the Delivery Point; provided, however, that the initial test prior to commercial operation need not be a four hour test. In addition, each of the Department and the Seller may request up to one additional test per year (at any time) utilizing the same four hour test procedures. After each test, the Seller will use performance curves certified by the original equipment manufacturer/architect engineer/vendor to adjust the test results to ISO Conditions. The ISO Condition-adjusted test results will be the "Rated Capacity," effective on the first day of the month following the month in which the Department receives written notice of the test results or as of the Commercial Operation Date, as the case may be. The Seller will provide notice to the Department five (5) Business Days prior to each test, and provide the Department with written notice of the test results and subsequent adjustment to the Rated Capacity within the later of five (5) Business Days of each test or as soon as practicable. The Department is entitled to witness any test of the Facility. The Department may request third party calibration of instrumentation used in any test, and in the event that a deviation equal to or more than 2% is found, the Seller shall bear the cost of such calibration, and if the instrumentation is within 2% deviation then the Department shall bear such cost. The results of the tests shall be used to adjust the Rated Capacity for the purpose of making performance adjustments hereunder. Any test pursuant to this Section 2.03 shall be conducted in accordance with the procedures set forth in Appendix C. The Rated Capacity established by the initial test must be equal to or greater than the capacity guaranteed by General Electric as adjusted by the value of auxiliary loads guaranteed under the EPC Contract. Any liquidated damages paid by the EPC contractor, as a result of a failure to achieve the adjusted guaranteed values, shall be utilized to the Department's benefit as follows (i) first, applied to the Construction Fund; (ii) second, applied to the Capitalized Interest Fund; and (iii) third, applied to the Debt Service Reserve Fund.

Section 2.04. Transmission and Energy Imbalances. (a) Notwithstanding anything to the contrary herein, the Seller shall arrange and shall obtain Schedule Coordinator services necessary to deliver the Energy to the Delivery Point. Except as set forth in Section 2.04(b) and

Section 2.04(d) below, the Seller shall not use the CAISO imbalance markets to effect delivery of Energy hereunder.

(b) Imbalances Due to Forced Outage. When a Forced Outage occurs, Seller shall notify the Department immediately and shall also notify CAISO as soon as reasonably possible. During the first three hours from the top of the hour in which the Forced Outage initiated, Seller may purchase up to three (3) hours of CAISO imbalance energy to meet its Schedule or Dispatch with the Department and such imbalance energy will be treated as Energy delivered to the Department for purposes of the Availability Guaranty in Section 4.01(a). The Parties acknowledge that the number of hours of this allowance is subject to change in the event that the CAISO changes its hour ahead market rules. Such allowance by the Department shall be limited to one Forced Outage per day and any CAISO imbalance energy delivered as a result of subsequent Forced Outages in the same day shall not be treated as delivered Energy under Section 4.01(a). Also, during the three hours following the Forced Outage, Seller shall use reasonable efforts, consistent with prudent utility practices, to either restore the Unit(s) to meet the Schedule and notify the Department or shall submit a Schedule change to reduce CAISO imbalance market energy delivery to zero by the end of such three-hour period. For CAISO imbalance energy purchased pursuant to this Section 2.04(b), Seller shall be entitled to recover (by invoicing the Department) an Equivalent Fuel Payment from the Department calculated in accordance with the formula provided in Section 2.04, and Seller shall be responsible for making payment to CAISO. The Department shall not be obligated to pay Variable O&M on such imbalance energy.

(c) Imbalances Due to Overgeneration. (i) In instances where the amount of Energy produced by the Facility exceeds the amount of Energy Scheduled by the Department by less than 1.5 MWh/hr per Unit, then, at the time that Seller receives payment from CAISO for the overgeneration, Seller shall pay the Department an amount equal to the amount of payment it received from CAISO. (ii) In instances where the amount of Energy produced by the Facility exceeds the amount of Energy Scheduled by the Department by 1.5 MWh/hr per Unit or more, then the Department shall be entitled to recover (by netting from the Purchase Price) from Seller the amount of the "Equivalent Fuel Payment" which is to be calculated in accordance with the formula provided below. (iii) The Department shall only be obligated to pay Variable O&M up to the amount of Energy Scheduled by the Department.

Equivalent Fuel Payment (\$) = Energy above or below Scheduled No. of MW x
Guaranteed Heat Rate x Gas Index Price

Gas Index Price = Gas Daily Midpoint at PG&E Citygate for the Gas Flow Day
(\$/MMBtu) or similar index as agreed by the Parties

(d) Imbalances Due to Undergeneration. (i) In instances where the amount of Energy produced by the Facility is less than the amount of Energy Scheduled by the Department, then Seller shall be responsible for making payment to CAISO for the resulting imbalance energy delivered to the Department by CAISO. However, Seller shall be entitled to recover (by invoicing the Department) an Equivalent Fuel Payment from the Department in an amount calculated in accordance with the formula provided in this Section 2.04. (ii) The Department

shall only be obligated to pay Variable O&M up to the amount of Energy delivered to the Department from the Facility.

Section 2.05. Dispatch and Scheduling. (a) Dispatch Generally. Commencing on the Commercial Operation Date, the Department shall have the discretion to Schedule or Dispatch the Facility and the Seller shall comply with any such direction to Schedule or Dispatch of the Facility, consistent with Facility operating constraints that are consistent with manufacturer recommendations and environmental permit limitations. Such Scheduling rights shall include the use of the CAISO day-ahead and hour-ahead scheduling processes, and any other scheduling process that may be implemented by CAISO. Such Dispatch rights shall include real time dispatchability and shall not be limited by any factors other than Facility operating constraints. In addition, the Seller shall make bids into the CAISO Ancillary Services markets as Dispatched by the Department, and shall comply with any resulting dispatch instructions from CAISO pursuant to all CAISO protocols. Any resulting Ancillary Service-related revenues paid by CAISO to the Seller shall be passed on to the Department. All costs associated with an Ancillary Service bid as directed by the Department shall be paid for by the Department. The Seller shall enter into and comply with a CAISO Participating Generator Agreement. As soon as practicable after the Commercial Operation Date, the Seller will cooperate with the Department to certify the Facility to its full capability for CAISO Ancillary Services pursuant to applicable CAISO tariffs.

(b) Scheduling and Dispatch for Delivery. Commencing on the Commercial Operation Date, if the Facility is Dispatched in a manner consistent with the provisions of this Agreement, and Prudent Industry Practices, then the Seller shall comply with the Schedule or Dispatch; provided, however, that in the event of any conflict among the foregoing standards, each such standard shall be given precedence in the order in which it is listed.

(c) Process for Scheduling. The Seller shall notify the Department prior to each operating day of the capacity that is expected to be actually available for Schedule or Dispatch on such operating day, taking into account factors such as expected ambient conditions (by using the Ambient Facility Output Table) and the operating status of the Facility, and shall update such notifications as ambient conditions and operating status change (each such notification an "Availability Notice"). The Availability Notice must be by each hour of the day. The Seller shall update the Availability Notice to reflect changes in the Facility's availability due to a Scheduled Maintenance Outage, a Forced Outage or a Force Majeure.

(d) Limitations on Scheduling. Aside from Facility operating constraints referred to in Section 2.05(a) above, the Department's right to Schedule or Dispatch the Facility shall be subject to the limitations set forth in Operating Procedures to be agreed upon by the Department and the Seller.

(e) Change of Delivery Point. The Parties hereby acknowledge that in the event that, during the Term of this Agreement (or during any Performance Damages Recovery Period pursuant to Section 4.06 herein), the CAISO (i) implements the Locational Marginal Pricing phase of its market redesign; or (ii) otherwise makes changes to its current zonal market design, the Department may, at its sole discretion, elect to receive Energy at a new Delivery Point. In each instance where the Department designates a new Delivery Point pursuant to this Section

2.05(e), the Department shall be responsible for paying for any increased CAISO charges that result from the change in Delivery Point.

Section 2.06. Fuel Supply Arrangements. (a) Generally. The Department shall be responsible for supplying gas to the Facility. Gas for the Facility must be delivered to the Seller at the Facility and the Department shall be solely responsible for any charges imposed by the appropriate local distribution company (the "LDC") in connection with the Department's delivery of gas to the Facility. Where the Department fails to deliver all or a portion of the gas required to generate Energy Scheduled or Dispatched by the Department, Seller's obligation to deliver such Energy shall be excused. Such excuse shall be the exclusive remedy of the Seller for the Department's failure to deliver gas and such failure by the Department shall not constitute an Event of Default under this Agreement. Whenever possible, the Department will use commercially reasonable best efforts to eliminate or mitigate imbalance charges or penalties regardless of the cause. However, any remaining imbalance charges or penalties shall be borne by the party causing the imbalance. Fuel imbalance charges resulting from Force Majeure in respect of the Facility shall be divided equally between the Department and the Seller.

(b) Annual Heat-Rate Adjustment. Annually, Seller shall perform a Heat Rate Test of the Facility pursuant to the requirements of Appendix C and the Department may make adjustments to payments made to Seller pursuant to Section 4.06.

(c) Interconnect and Service Agreement. Seller shall enter into a Natural Gas Service Agreement with PG&E and shall identify the Department as the Fuel Manager for the Facility under the terms of that agreement such that the Department can supply and deliver gas to the Facility. The Seller shall invoice the Department in an amount equal to the portion of any charges incurred by the Seller under such Natural Gas Service Agreement that are directly due to the supply, transportation, storage of gas.

(d) Fuel for Startup and Shutdown. The Department shall supply the fuel necessary for startup and shutdown and receive both the Energy generated during startup and shutdown and any payment made by CAISO for such Energy.

Section 2.07. Sources of Payment; No Debt of State. Department's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture executed by the Department providing for the issuance of bonds by the Department and in the Rate Agreement and in the Priority Long Term Contracts. Any liability of Department arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any damages arising as the result of any breach or Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System,

and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.08. Term. Unless earlier terminated pursuant to Article VII, the term of this Agreement (the "Term") shall commence at 12:00 a.m. (Pacific time) on the date of execution of this Agreement and shall continue until the tenth (10th) anniversary of such date of the Commercial Operation Date; provided, however, (a) Seller may terminate this Agreement at any time from and after the fifth (5th) anniversary of the Commercial Operation Date; provided however that Seller must also provide an additional one (1) year written notice to the Department (such that the minimum Term of this Agreement shall be for six (6) years from Commercial Operation Date), and (b) the Department may terminate this Agreement at such time there will no longer be any Debt Service component of the Capacity Payment; provided however that the Department must provide Seller with one (1) year written notice; and as a condition of such termination the Department must pay to the Seller an amount sufficient for the Seller to redeem or defease the then currently outstanding Initial Bonds on the date required to give notice to the owners of the Initial Bonds in accordance with the Indenture.

Section 2.09. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, the Department covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by the Department pursuant to this Agreement and the Department Act. As provided in Section 80200 of the Water Code, while any obligations of the Department pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of the Department and the CPUC shall not be diminished or impaired in any manner that would affect adversely the interests and rights of the Seller under this Agreement.

Section 2.10. Seller's Obligations; No Debt of Seller. The obligations of the Seller hereunder are limited obligations of the Seller payable solely from amounts received with respect to the Facility and do not constitute a debt of the Seller in contravention of any constitutional or statutory limitation or restriction and do not constitute obligations for which the Seller is obligated to levy or pledge any form of taxation. The Seller shall not be obligated to meet its obligations hereunder from any funds other than moneys received with respect to the Facility.

ARTICLE III

OPERATION OF THE FACILITY

Section 3.01. (a) Permits. The Seller shall, at its expense, acquire and maintain in effect, from any and all government agencies with jurisdiction over the Seller and/or the construction or operation of the Facility, all Governmental Approvals, in each case necessary at that time (i) for the construction of the Facility in accordance with this Agreement; and (ii) for the operation of the Facility to provide the Rated Capacity and Energy. The Seller shall operate the Facility in

compliance with the Facility's Governmental Approvals. Hours of the Day during which the Facility is able to produce and deliver Energy shall not be limited by permit conditions.

(b) Emission Reduction Credits. The Seller shall determine emission rates of the Facility and obtain sufficient emission reduction credits from the appropriate air quality control entities having jurisdiction over the Facility to ensure that (i) the Facility can operate for 2,500 hours of full load operations during any period of twelve (12) consecutive months; and (ii) the Facility can be started for up to 330 starts per Unit (including Failed Unit Starts) during any period of twelve (12) consecutive months. Further, on the first of each month, during each Operating Year, the Seller shall provide the Department with an estimate of the actual cumulative emission amounts for the Operating Year and the estimated number of remaining full load operating hours and starts available for the Facility for the balance of the Operating Year.

Section 3.02. Operation and Maintenance of the Facility. (a) Generally. The Seller shall operate and maintain, the Facility in accordance with Prudent Industry Practices.

(b) Scheduled Maintenance Outages. (i) Annually, 30 days before the beginning of each Operating Year, the Seller and the Department shall mutually agree on the dates of and the number of whole days that may be set aside for Scheduled Maintenance Outages for the Operating Year. Such Scheduled Maintenance Outage days shall not be planned during the months of June, July, August, September, or October; provided, however, that Seller may request a Scheduled Maintenance Outage during these months between the hours of 10:00 p.m. and 6:00 a.m. and the Department, at its sole discretion, may agree to Seller's request.

(ii) In no event shall the total number of Scheduled Maintenance Outage days exceed ten (10) days for any Operating Year unless the Department, in its sole discretion, expressly consents to the number of additional days. Once Seller reaches the maximum number of Scheduled Maintenance Outage days for the Operating Year, any continuation of the outage shall constitute a Forced Outage for purposes of this Agreement. This requirement may be waived by the Department in its sole discretion. The Seller shall notify the Department that it has planned a Scheduled Maintenance Outage at least seventy-two (72) hours in advance of the outage; provided however, that where Seller is requesting the Department's approval for a Scheduled Maintenance Outage during the months of June, July, August, September, or October, the Seller shall only be required to provide notice to the Department four (4) hours in advance of the requested outage; . In the event that Seller fails to provide the required notice in advance of the outage, then the portion of the outage taking place prior to the passage of seventy-two (72) or four (4) hours, as the case may be, shall be treated as a "Forced Outage" for purposes of this Agreement. Such notice shall identify the proposed start time and duration of the Scheduled Maintenance Outage.

(iii) For purposes of calculating the total number of days of Schedule Maintenance Outage in a given Operating Year, each occurrence of a Scheduled Maintenance Outage shall be counted in the following manner:

(A) Any Scheduled Maintenance Outage approved by the Department during the months of June, July, August, September or October pursuant to Section 3.02(b)(i) shall count as follows:

(1) Scheduled Maintenance Outages taking place Monday-Saturday with a duration less than 4 hours shall be counted as one-quarter (1/4) day;

(2) Scheduled Maintenance Outages taking place Monday-Saturday with a duration between 4 hours and less than 8 hours shall be counted as one-half (1/2) day.

(3) Scheduled Maintenance Outages taking place on Sunday with a duration of less than 8 hours shall be counted as one-half (1/2) day;

(4) Scheduled Maintenance Outages taking place on Sunday with a duration between 8 hours and up to 24 hours shall be counted as one (1) whole day.

(B) Any Scheduled Maintenance Outage occurring during the months of January through May or November or December shall count as follows:

(1) Scheduled Maintenance Outages with a duration of less than 6 hours shall be counted as one-half (1/2) day;

(2) Scheduled Maintenance Outages with a duration between 6 hours and up to 24 hours shall be counted as one (1) whole day.

(iv) The Department may not Schedule or Dispatch the Facility during a Scheduled Maintenance Outage. Upon providing the Department with the required written notice in accordance with this Section 3.02, Seller may treat Forced Outages as Scheduled Maintenance Outages so long as Seller does not exceed the agreed upon maximum number of Scheduled Maintenance Outage days applicable for that Operating Year.

Section 3.03. Reports; Inspection Rights; Change to Facility. From the date of execution of this Agreement through the Commercial Operation Date, the Seller shall supply progress reports to the Department monthly, within fifteen (15) Days after the end of each month, describing progress toward completion of the Major Milestones. If the Facility has not achieved Commercial Operation by the target Commercial Operation Date set forth in Appendix B, the Department may require the Seller to supply progress reports more frequently as reasonably determined necessary by the Department in its sole discretion. Such reports shall include status of accomplishing major development and construction milestones including obtaining all permits, securing project financing, acquisition and installation of major equipment, and start-up testing. The Department may inspect the Facility, the Facility construction site or on-site the Seller data and information pertaining to the Facility during business hours upon reasonable notice. The Seller will not increase the capacity or change the design of the Facility without the written approval of the Department.

Section 3.04. Metering. The meter for the Facility shall be on the high side of the Facility transformer. Metering shall conform to CAISO standards or the equivalent. Any generation meter multiplier (GMM) adjustments shall be for the Department's account (i.e. notwithstanding any required GMM adjustments, the Seller shall be deemed to have delivered the full metered amount of energy from the Facility). The Seller shall provide CAISO metering settlement data to the Department on a monthly basis, and, at the Department's option and expense, real-time access to meter data via appropriate telecommunications equipment.

Section 3.05. Financing of the Facility. (a) General. The Seller shall use its best efforts to finance the Facility Cost with the Initial Bonds. The Initial Bonds will be sold by means of a negotiated sale. The Seller shall notify the Department in writing five days prior to the mailing of the preliminary official statement or limited offering memorandum or other disclosure document with respect to the Initial Bonds which notice shall specify the Bond Sale Time. Pricing shall begin no later than 72 hours prior to the Bond Sale Time. The Department shall be entitled to attend throughout the Initial Bond pricing process and consult with the underwriters at all times

during such process. Proposed Final Terms shall be established by the Seller no later than 48 hours prior to the Bond Sale Time and communicated to the Department in writing. The Seller shall provide the Department with drafts of financing documents as such documents become available, and shall make reasonable changes to such documents as requested by the Department.

(b) Department Disclosure. The Department shall provide the Seller with the annual and quarterly disclosure statements that it is required to prepare in connection with bonds issued by the Department in connection with the power supply program.

(c) Department Continuing Disclosure. The Department shall provide to Seller upon Seller's written request certain specified information to the Seller as may be agreed to prior to the issuance of the Bonds for the purpose of enabling the Seller to comply with its continuing disclosure obligations under any undertaking with the purchasers of Bonds; provided, however, that the Department's obligations hereunder shall be limited to providing to Seller such specified information upon written request and the Department shall not be required to enter into any undertaking with the purchasers of Bonds or make any filings with respect to the Bonds; and further provided, that under no circumstances shall such requirements exceed the requirements that the Department is subject to in connection with the bonds issued by the Department in connection with its power supply program

(d) Changes Proposed by Seller. The Department agrees to meet with the Seller and discuss any changes to this Agreement proposed by Seller in connection with the financing of the Facility; provided, however, that the Department shall not be obligated to make any such proposed changes.

Section 3.06. Operating Protocols and Procedures. The Coordinating Committee shall meet at least sixty (60) days prior to the anticipated date of Commercial Operation to develop "Initial Operating Protocols" for the Facility. Among other things, such Initial Operating Protocols shall address the information to be contained in and include a form of the Availability Notice to be used by Seller and shall contain a requirement that Seller provide periodic reports to the Department, which reports shall include an annual reconciliation of all funds and accounts established pursuant to this Agreement and the Indenture. Further, as soon as practicable after the Commercial Operating Date, the Parties shall jointly develop Operating Procedures for the Facility. Such Operating Procedures shall contain a requirement for Seller to provide periodic reports to the Department.

Section 3.07. Certain Funds and Accounts. (a) Debt Service Reserve Fund. The Parties hereby agree that a Debt Service Reserve Fund (as that term is defined in the Indenture for the Initial Bonds) shall be established from the proceeds of the Initial Bonds. In the case of expiration of this agreement, the Parties agree that all funds remaining in the Debt Service Reserve Fund in the month in which the final Debt Service payment is due shall be used towards payment of the final Debt Service therefore reducing the Debt Service component of the Capacity Payment.

(b) Operating Reserve Fund. The Parties hereby agree that an Operating Reserve Fund (as that term is defined in the Indenture for the Initial Bonds) shall be established from the proceeds of the Initial Bonds and that the purpose of the Operating Reserve Fund is to provide funds reasonably necessary for continued operation of the Facility. Further, the Parties agree that the Department shall be responsible for replenishing funds withdrawn by Seller from the Operating Reserve Fund. The Parties hereby acknowledge that if the Department does provide funds to partially or fully replenish the Operating Reserve Fund, then the Department shall be entitled to recover an amount equal to the funds it provided pursuant to Section 4.06(g) herein.

(c) Major Maintenance Fund. The Parties hereby agree that a Major Maintenance Fund shall be established and governed in accordance with Section 2.02(d) herein.

(d) Construction Fund. The Parties hereby agree that a Construction Fund (as that term is defined in the Indenture for the Initial Bonds) shall be established from the proceeds of the Initial Bonds. Further, the Parties agree that all funds remaining in the Construction Fund after the Commercial Operations Date that are no longer required for payment of construction costs of the Facility shall be applied promptly to redeem Initial Bonds in accordance with the Indenture.

(e) Capitalized Interest Fund. The Parties hereby agree that a Capitalized Interest Fund (as that term is defined in the Indenture for the Initial Bonds) shall be established from the proceeds of the Initial Bonds. Further, the Parties agree that all funds remaining in the Capitalized Interest Fund after the Commercial Operations Date that are no longer required for payment of interest on the Initial Bonds shall be applied promptly to redeem Initial Bonds in accordance with the Indenture.

(f) Operating Account. The Parties hereby agree that an Operating Account (as that term is defined in the Indenture for the Initial Bonds) shall be established prior to the Commercial Operation Date. The Parties agree that upon expiration or termination of this Agreement all funds remaining in the Operating Account shall be refunded by Seller to the Department within ninety (90) days of the expiration or termination date.

Section 3.08. Department Compensation Payment. The Parties hereby agree that upon expiration or termination of this Agreement, the Seller shall make a payment to the Department in the amount set forth in Appendix D attached hereto (the "Department Compensation Payment"). Payment by Seller of the Department Compensation Payment shall be due within ninety (90) days of last day of the original Term of this Agreement or of the termination date of this Agreement as the case may be. Seller's obligation to pay the Department Compensation Payment shall be subject to requirements described in Section 4.06(i) herein.

Section 3.09. Letter Agreement. No later than 2 business days prior to the Department Commitment Time, the Parties shall enter into a Letter Agreement (the "Letter Agreement") which shall set forth the amounts agreed to by the Parties for Fixed O&M, Variable O&M, Major Maintenance Fund, Seller's Administrative Costs (including insurance costs), Annual Performance Damages Cap and Term Performance Damages Cap pursuant to Sections 2.02(a), 2.02(b), 2.02(d), 2.02(e) and 4.06(g) hereof. The Letter Agreement shall also contain final values for the "Credit Capacity Payment" column in Appendix D, which final values shall be based on the final debt service reserve fund sizing for the Bonds.

ARTICLE IV

GUARANTEES OF PERFORMANCE

Section 4.01. Availability. (a) Availability Guaranty. The Capacity Payment payable in each month shall be subject to adjustment in amounts as determined below so as to equal the Adjusted Capacity Payment ("ACP"); provided, however, that rather than making an immediate adjustment to the amount of the Capacity Payment to be paid by the Department, the Department shall defer the amount of the adjustment pursuant to Section 4.06(e) herein.

Where:

If $EA > 0.97$ for the Summer Season the bonus shall be determined as follows:

$$ACP = \text{Capacity Payment} \times [1 + (EA - \text{Bonus Target EA}) / \text{Bonus Target EA}]$$

If $EA < 0.95$ for the Summer Season or < 0.92 for the Winter Season, a downward adjustment shall be determined as follows:

$$ACP = \text{Capacity payment} \times [\text{lesser of: } 1 \text{ and } 1 - (2 \times (\text{Target EA} - EA) / \text{Target EA})]$$

$$EA = (\text{Summation of Hourly Availability Factors for the Monthly Availability Hours}) / (\text{Number of Monthly Availability Hours in month})$$

Hourly Availability Factor is determined for each Monthly Availability Hour as the quotient of (a) the capacity reflected in the Seller's Availability Notice applicable for such hour, divided by (b) the Hourly Ambient Capacity for such hour.

Bonus Target EA = 0.97 for the Summer Season, there is no bonus to be paid for Winter Season Availability

Target EA = 0.95 for the Summer Season or 0.92 for the Winter Season

Summer Season is the months June through October. The Winter Season is the months November through May.

Where:

ACP calculation less Capacity Payment yields a negative number, then result is to be deemed a "Monthly Availability Damages" for purposes of Section 4.06(e) herein; provided however that the amount of Monthly Availability Damages shall not exceed the amount of the Capacity Payment for that month.

ACP calculation less Capacity Payment yields a positive number, then result is to be deemed a "Monthly Availability Bonus" (if applicable) for purposes of Section 4.06(h) herein.

(b) Failure to Meet Guaranteed Availability. The Department may terminate this Agreement pursuant to Section 4.02(e) if the Facility has failed to meet a sixty percent (60%) EA in any two consecutive six-month periods. The provisions of this Section 4.01 and Section 4.02(e) shall be the exclusive remedies of the Department for the Seller's failure to meet the Guaranteed Availability so long as such failure is not due to intentional conduct of the Seller. In the event of intentional conduct of the Seller resulting in the non-delivery of Energy or the non-availability of Capacity as reasonably determined by the Department based on all reasonably ascertainable facts and circumstances, such an event shall be an Event of Default and the Department shall be entitled to damages set forth in Article VII. The Seller shall not use the CAISO imbalance markets to effect delivery of Energy hereunder except as provided in Section 2.04 herein. The Parties hereby acknowledge that other than using the CAISO imbalance markets to effect delivery of Energy as provided in Section 2.04 herein, Seller shall not use any energy other than Energy produced by the Facility to effect delivery of Energy for purposes of this Agreement.

Section 4.02. Termination Without Recourse. (1) Optional Termination. In addition to any other termination rights herein, a Party shall have the right, but not the obligation, to terminate the Agreement without the approval of the other Party and without recourse against the other Party for any damages or other costs and without any further obligation or liability of either Party, as follows:

(a) the Seller may terminate this Agreement at any time prior to the Commercial Operation Date upon thirty (30) days written notice if the Seller determines in its sole discretion that (i) key approvals or permits for the Facility cannot be obtained on a timely basis or that the Seller cannot otherwise meet its obligations hereunder or under the Implementation Agreement, or (ii) proceeding with the development, acquisition and construction of the Facility will result in unacceptable risk to the Seller, or (c) elects to proceed with the Facility without this Agreement pursuant to Section 3.01(c) of the Implementation Agreement; provided, however, that the Department shall incur no liability to any other person as the result of any such termination.

(b) the Department may terminate this Agreement at any time prior to the Department Commitment Time, upon ten (10) days written notice at any time prior to the delivery of notice of the Bond Sale Date and upon immediate notice from and after the delivery of notice of the Bond Sale Date if the Department determines, in its sole discretion, that the cost of such Facility is or will become unacceptable. For the purposes of this subsection (b), the term "costs of the Facility" shall include both amounts payable to the Seller hereunder, including but not limited to, Sections 2.01 and 2.06 hereof, and all costs incurred by the Department in connection with the Facility.

(c) the Department may terminate this Agreement at any time upon twenty (20) days written notice if (i) Seller has not secured a site for the construction of the Facility by

December 31, 2003; provided, Seller uses best efforts during such period to secure the site as soon as reasonably practicable; or (ii) In the event that the Seller does not receive CEC approval for a Negative Declaration for the Facility, and (A) the Application for a Small Power Plant Exemption ("SPPE") for the Facility is not submitted to the CEC by the earlier of (1) date the site is secured plus thirty (30) days or (2) January 31, 2004; or (B) the CEC has not issued a Decision and Negative Declaration by July 31, 2004; or (C) Seller fails to enter into EPC Contract by the date the CEC has issued a Decision and Negative Declaration plus thirty (30) Days.

(d) a Party not claiming the Force Majeure event may terminate this Agreement upon ten (10) days written notice if a Force Majeure event continues uninterrupted for more than twelve (12) months.

(e) the Department may terminate this Agreement upon ten (10) days written notice if the Facility has failed to meet a sixty percent (60%) EA in any two consecutive six-month periods.

(f) The Department may terminate this Agreement upon ten (10) days written notice if the Facility fails to achieve Commercial Operation by the date that is twenty four (24) months after the date of execution of this Agreement.

(g) The Department may terminate this Agreement without notice for failure by the Seller to pay excess Availability Damages amounts in accordance with Section 4.06(e).

(h) Either Seller or the Department may terminate this Agreement in accordance with Section 2.08 herein.

(2) Automatic Termination. In addition to any other termination rights herein, this Agreement shall automatically terminate without any requirement of approval of either Party or notice and without recourse against either Party for any damages or other costs and without any further obligation or liability of either Party in the event (a) any of the Final Terms are changed prior to the issuance of the Initial Bonds, (b) the Initial Bonds are not issued for any reason after the execution of the Bond Purchase Agreement, or (c) the Seller does not issue the notice to proceed under the EPC Contract by the issuance of the Initial Bonds.

Section 4.03. Rated Capacity. The Department may exclude from the Rated Capacity of the Facility the amount of MW allocable to any Unit where the Rated Capacity of such Unit is less than forty (40) MW, provided, however, that the Seller may re-run the performance test two times, within one-hundred-twenty (120) Days following the Commercial Operation Date, to attempt to achieve a Rated Capacity of any such Unit in excess of forty (40) MW.

Section 4.04. Liquidated Damages. (a) As to Availability and Rated Capacity The Parties agree that the Department's actual damages in the event Facility fails to achieve a particular availability or rated capacity would be extremely difficult or impracticable to determine and that, after negotiation, the Parties have agreed that the liquidated amounts set forth in Sections 4.01 and 4.06 are a reasonable estimate of the damages that the Department would incur as a result of such failures and delays.

Section 4.05. Exclusive Remedies for Shortfalls and Delays. Notwithstanding Article VII or any other provision of this Agreement, and assuming no intentional breach by the Seller hereunder, the provisions of Section 4.01, 4.02(e), 4.03 and 4.06 shall provide the Department's exclusive remedy in the event the Seller fails to schedule, deliver or provide all or part of the Rated Capacity or Energy or if the Facility fails to achieve a particular Rated Capacity or Guaranteed Availability. Failure to pay any amounts due under the provisions of Section 4.01 shall, however, constitute a separate and distinct Event of Default to which Article VII shall apply.

Section 4.06. Performance Damages. (a) General. The Parties agree that, for each Operating Year, Seller may incur Rated Capacity Damages, Heat Rate Damages, Starting Reliability Damages, Availability Damages, and Operating Reserve Damages (collectively, "Performance Damages") pursuant to this Section 4.06.

(b) Rated Capacity Damages. Damages shall be calculated in accordance with the following formula:

For each Operating Year:

$$\text{Rated Capacity Damages} = \text{Sum of Capacity Payments made for Operating Year} \times (1 - \text{Rated Capacity} / \text{Target Rated Capacity})$$

However, as used in the above formula, the value of Rated Capacity divided by Target Rated Capacity cannot exceed 1.0

(c) Heat Rate Damages. Damages shall be calculated in accordance with the following formula:

For each Operating Year:

If THR is less than or equal to GHR, then no Heat Rate Damages

If THR is greater than GHR, then Heat Rate Damages = \$750 per Btu/kWh x (THR – GHR)

Where:

GHR = Guaranteed Heat Rate at 10,000 Btu/kWh

THR = Test Heat Rate calculated from a Heat Rate Test for the Facility

(d) Starting Reliability Damages. Damages shall be calculated in accordance with the following formula:

For each Operating Year:

If SUS is greater than or equal to SRT, then no Starting Reliability Damages

If SUS is less than SRT, then Starting Reliability Damages = \$10,000 x (SRT – SUS)

Where:

SUS = Total number of Successful Unit Starts for the Operating Year

FUS = Total number of Failed Unit Starts for the Operating Year

Total Unit Starts for the Operating Year or "TUS" = SUS + FUS

Starting Reliability Target or "SRT" = TUS x .95

(e) Availability Damages. (1) Damages shall be determined as follows:

For each Operating Year:

Annual Availability Damages = sum of Monthly Availability Damages (calculated pursuant to Section 4.01) for each month of Operating Year

For Term of Agreement:

Term Availability Damages = sum of Annual Availability Damages deferred by being tracked in the Balancing Account pursuant to this Section 4.06(e) and Section 4.06 (g)

(2) Availability Damages Caps: The Parties agree that for each Operating Year, a maximum of \$1,400,000 ("Annual Availability Damages Cap") may be deferred by tracking said amount in the Balancing Account (see Section 4.06(h) below) as an amount owed by Seller to the Department. Upon reaching the Annual Availability Damages Cap, Seller must make payment to the Department in the amount of Annual Availability Damages in excess of the Availability Damages Cap. In the event that Seller fails to pay such excess amount to the Department within 30 days of reaching the Annual Availability Damages Cap, the Department shall have the right to terminate the Agreement without notice to Seller. The Parties further agree that a maximum of \$7,000,000 ("Term Availability Damages Cap") may be deferred over the Term of the Agreement. Upon reaching the Term Availability Damages Cap, Seller must make payment to the Department for all Monthly Availability Damages incurred in excess of the Term Availability Damages Cap. In the event that Seller fails to pay such excess amounts to the Department within 30 days of incurring such Monthly Availability Damages, the Department shall have the right to terminate the Agreement without notice to Seller.

(3) For the first Operating Year, the Parties acknowledge that a shortfall in Rated Capacity may contribute to a shortfall in Availability as defined in this Agreement, and that it is not the intent of the Parties for Availability Damages to be assessed more than once for a performance deficiency.

(f) Operating Reserve Damages. (1) Pursuant to Section 3.07(e) herein, the amounts replenished by the Department in each instance shall be deemed to be "Operating Reserve Damages" for purposes of this Agreement and shall be tracked in the Balancing Account (see Section 4.06(g) below) as an amount owed by Seller to the Department.

(2) In the event that, Seller withdraws or causes funds to be withdrawn from the Operating Reserve Fund for a purpose other than the purpose authorized in Section 3.07(b) herein, the amount of each such withdrawal shall be deemed to be "Operating Reserve Damages" for purposes of this Agreement and shall be tracked in the Balancing Account (see Section 4.06(g) below) as an amount owed by Seller to the Department.

(3) In the event that, Seller's actions result in a withdrawal from the Operating Reserve Fund to pay amounts not otherwise due and owing by the Department pursuant to the terms and conditions of this Agreement, the amount of each such withdrawal shall be deemed to be "Operating Reserve Damages" for purposes of this Agreement and shall be tracked in the Balancing Account (see Section 4.06(g) below) as an amount owed by Seller to the Department.

(g) Balancing Account. (1) General. The Parties agree that, for each Operating Year, any availability bonus earned by Seller pursuant to Section 4.01 of this Agreement ("Monthly Availability Bonus") shall be set aside in a balancing account (the "Balancing Account") for the duration of that Operating Year. Within thirty (30) days of the end of each Operating Year the Department shall determine the amount of Performance Damages payable by Seller for the Operating Year pursuant to this Section 4.06 and shall notify Seller of the amount of Performance Damages to be offset against that Operating Year's Availability Bonus up to the full amount of that Operating Year's Availability Bonus. In the event that the amount of the Availability Bonus exceeds the amount of Performance Damages for that Operating Year, the Department shall pay the remaining balance of the Availability Bonus to Seller. In the event that the amount of Performance Damages exceeds the amount of Availability Bonus for that Operating Year, the remaining amount of Performance Damages owed by Seller (after deducting the entire amount of that Operating Year's Availability Bonus) shall be tracked within the Balancing Account as an amount owed by Seller to the Department for that Operating Year. Interest at the Index Rate shall accrue annually on such amounts owed by Seller to the Department.

(2) Performance Damages Caps. Prior to the Department Commitment Time, the Department and the Seller shall agree on a maximum amount of Performance Damages ("Annual Performance Damages Cap") which may be deferred in any given Operating Year by tracking said amount in the Balancing Account as an amount owed by Seller to the Department. Further, prior to the Department Commitment Time, the Department and the Seller shall agree on a maximum amount of Performance Damages ("Term Performance Damages Cap") which may be deferred over the Term of the Agreement. The Parties hereby agree that upon reaching the Annual Performance Damages Cap, Seller must make payment to the Department in the amount of Annual Performance Damages (as defined below) in excess of the Annual Performance Damages Cap. In the event that Seller fails to pay such excess amount to the Department within 30 days of the notice given pursuant to subsection (4) of this section upon reaching the Annual Performance Damages Cap, the Department shall have the right to terminate the Agreement without notice to Seller. Further, the Parties hereby agree that upon reaching the Term Performance Damages Cap, Seller must make payment to the Department for all Term Performance Damages (as defined below) incurred in excess of the Term Performance Damages Cap. In the event that Seller fails to pay such excess amounts to the Department within 30 days of the date of the notice given pursuant to subsection (4) of this section on which Term Performance Damages first exceeded the Term Performance Damages Cap, the Department shall have the right to terminate the Agreement upon without notice to Seller.

(3) For purposes of this Section 4.06(g), the following definitions shall apply:

Annual Performance Damages = sum of all monthly Rated Capacity Damages, Heat Rate Damages, Starting Reliability Damages, Availability Damages and Operating Reserve Damages for a given Operating Year.

Term Performance Damages = sum of all accumulated amounts for Rated Capacity Damages, Heat Rate Damages, Starting Reliability Damages, Availability Damages and Operating Reserve Damages tracked in the Balancing Account as amounts owed by Seller to the Department on any given date.

(4) Tracking of Annual and Term Performance Damage Caps: Within 20 days after any month during the term hereof in which the Seller incurs or otherwise becomes responsible

for any damages or other amounts which are required to be included in the calculation of Annual Performance Damages or Term Performance Damages, the Seller shall provide to the Department a calculation demonstrating the then-current amount of Annual Performance Damages and Term Performance Damages.

(h) Dispute Resolution. In the event that disputes arising under this Section 4.06 or under Section 2.02(e) herein cannot be resolved by members of the Coordinating Committee, the aggrieved Party may serve notice to the other Party of its intent to initiate dispute resolution proceedings. Within 10 days of the date of the notice, both Parties must designate a member of its senior management to serve as its primary representative (the "Primary Representative"). The Primary Representatives must meet within 30 days of the date of the dispute resolution notice and attempt, in good faith, to resolve the dispute. If the Primary Representatives cannot resolve the dispute, either Party may request non-binding mediation of such disputes. The non-requesting party may decline the request in its sole discretion. In the event that the non-requesting Party declines the request for mediation, or if the Parties participate in non-binding mediation, at the conclusion of such non-binding mediation, either Party may thereafter seek such relief in law or equity as may be appropriate.

(i) Seller Assurances of Payment. In order to secure the obligation of the Seller to make payments to the Department pursuant to this Agreement, the Seller hereby pledges and agrees that it will not transfer, mortgage, assign or otherwise encumber the Facility (except as set forth in the Indenture). In addition, the Seller agrees that it will not pledge or assign the revenues generated from the operation of the Facility to any person other than the trustee for the holders of the Initial Bonds (or to the provider of any insurance or credit enhancement securing the Initial Bonds). In addition, subject to the provisions of the Indenture, the Seller agrees that, in the event that the Seller fails to make any payments required to be made to the Department pursuant to this Agreement within the payment period provided herein, the Seller shall liquidate or otherwise sell the Facility (pursuant to a method of sale subject to the reasonable approval of the Department), subject to the provisions of the Indenture. The Seller pledges the proceeds of any such sale to payment of amounts owed to the Department hereunder, and such pledge shall be senior in priority to all other obligations of the Seller other than the Initial Bonds.

ARTICLE V

PAYMENTS

Section 5.01. Billing Requirements. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address. Seller's invoices shall be itemized such that the charges making up the various components of the Capacity Payment and the Purchase Price are listed separately. Any Ancillary Service-related revenues paid by CAISO to the Seller pursuant to Section 2.05, any disbursement of Reserve Accounts pursuant to Section 3.05, and any payment of Performance Damages pursuant to Section 4.06 shall be sent to the Department at the address set forth in Appendix A hereto.

Section 5.02. Timing of Payments. All payments for amounts billed hereunder shall be paid so that such payments are received by the Seller by the twentieth (20th) Day of the Invoice Month or by tenth (10th) Day after receipt of the bill, whichever is later. Payment shall be made by electronic funds transfer, or by other mutually agreeable method, to the account designated by the Seller and set forth in Appendix A. If the due date falls on a non-Business Day, then the payment shall be due on the next following Business Day. Likewise, unless otherwise expressly stated herein, any payments for amounts billed by Department to Seller hereunder shall be paid so that such payments are received by the Department by the twentieth (20th) Day of the Invoice Month or by tenth (10th) Day after receipt of the bill, whichever is later. Payment shall be made by electronic funds transfer, or by other mutually agreeable method, to the account designated by the Department and set forth in Appendix A. If the due date falls on a non-Business Day, then the payment shall be due on the next following Business Day.

Section 5.03. Late Payments. Amounts not paid on or before the due date, including without limitation amounts due and not paid under Article VII, shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with Government Code Section 927.6(b) not to exceed 15%.

Section 5.04. Disputes.

(a) Generally. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the rate provided in Section 5.03 from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate provided in Section 5.03 from and including the date

of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 5.04 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

Section 5.05. Records Retention and Audit.

(a) Records Retention.

(i) Generally. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of 3 years after the date of receipt of final payment under this Agreement. Within three (3) years from the date of receipt of final payment under this Agreement, either Party may request in writing copies of the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(ii) Maintenance Schedule. The Seller shall maintain records of unit-by-unit maintenance schedules for one year following the year in which the maintenance was conducted.

(b) Audit. The Seller agrees that the Department, The Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to sales of Rated Capacity or Energy by the Seller to the Department pursuant to this Agreement. The Seller agrees to maintain such records for possible audit for a minimum of three (3) years after the final payment under this Agreement. The Seller agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Seller agrees to include similar right of the State to audit records and interview staff in any material contract with contractors or suppliers related to performance of this Agreement.

ARTICLE VI

FORCE MAJEURE

Section 6.01. Force Majeure.

(a) No Breach for Force Majeure. No Party shall be liable for or considered to be in breach of this Agreement to the extent that a failure to perform its obligations (other than an obligation to pay money) under this Agreement shall be due to a Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations

hereunder and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations hereunder (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch.

(b) Payment During Force Majeure. The Department's obligation to pay the Capacity Payment will not be excused on account of an event of Force Majeure to the extent that the Seller is capable of providing the Rated Capacity or Energy. If the Seller is unable to provide all or part of the Rated Capacity and Energy as a result of a Force Majeure, the Department shall pay the Capacity Payment only to the extent that the Seller is providing the Rated Capacity and Energy on a pro-rata basis calculated in accordance with Section 4.01 of this Agreement

(c) Termination for Force Majeure. If an event of Force Majeure continues uninterrupted for more than twelve (12) months, the Party not claiming the Force Majeure event may terminate this Agreement pursuant to Section 4.02(d).

ARTICLE VII

DEFAULT

Section 7.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

(a) if default shall be made in the due and punctual payment of the Purchase Price when and as the same shall become due and payable, and such default shall continue for a period of 10 days after written notice thereof by the other party (the "Non-Defaulting Party") to the Defaulting Party;

(b) if default shall be made by the Defaulting Party in the performance or observance on its part of any other of the covenants or agreements contained in this Agreement to be performed, other than as specified in clause (1) above, and such default shall continue for a period of 60 days after written notice thereof to the Defaulting Party by the Non-Defaulting Party; provided, however, that if such default shall be such that it cannot be remedied by the Defaulting Party within such 60 day period, it shall not constitute an Event of Default if corrective action is instituted by the Defaulting Party within such period and diligently pursued by the Defaulting Party until the default is remedied;

(c) default by the Seller under the Implementation Agreement;

(d) default under a Management Agreement.

Section 7.02. Remedies for Events of Default. If an Event of Default occurs and is continuing, the Non-Defaulting Party may exercise any remedies available to it at law, in equity,

by statute or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party or mandamus to compel performance of obligations hereunder. Without limiting the foregoing, either party may terminate this Agreement upon the occurrence and continuance of an Event of Default upon 30 days prior written notice to the defaulting party.

Section 7.03. Remedies not Exclusive. No remedy by the terms of this Agreement conferred upon or reserved to the Non-Defaulting Party is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.

Section 7.04. Effect of Waiver and Other Circumstances. No delay or omission of the Non-Defaulting Party to exercise any right or power arising upon the happening of an Event of Default shall impair any right or power or shall be construed to be a waiver of any such default or to be an acquiescence therein and every power and remedy given by this Article to the Non-Defaulting Party may be exercised from time to time and as often as may be deemed expedient by the Non-Defaulting Party. A Non-Defaulting Party may waive any past default hereunder and its consequences. No such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Title, Risk of Loss. The Seller warrants that it will deliver the Energy to the Department free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point. **SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE FROM AND AFTER THE DELIVERY POINT.** Risk of loss of the Energy shall pass from the Seller to the Department at the Delivery Point.

Section 8.02. Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State, without regard to the conflicts of laws rules thereof.

Section 8.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the State of California.

Section 8.04. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller. In the event that changes in Laws, regulations or practices, including changes in procedures governing sales into the State's wholesale power markets, materially alter the procedures applicable to Parties' performance of their respective obligations hereunder, the

Parties will endeavor in good faith to negotiate appropriate and mutually agreeable amendments to this Agreement or separate protocols to reflect such changes.

Section 8.05. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original instrument and as if the Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 8.06. Taxes. The Purchase Price, as defined herein, shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Rated Capacity and Energy that arise prior to the Delivery Point; If the Department is required to remit any tax for which the Seller is responsible under this Section 8.06, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to the Rated Capacity and Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Rated Capacity and Energy.

Section 8.07. Limitations of Liability, Remedies and Damages. Each Party acknowledges and agrees that in no event shall any officer, member of its governing bodies, employee, or affiliate of either Party be liable to any other person or Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party, or for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder, and the sole recourse for performance of the obligations under this Agreement shall be against Seller and or against the Department, and not against any other person, except for such liability as expressly assumed by an assignee or guarantor pursuant to an assignment of this Agreement.

Section 8.08. Transfer of Interest in Agreement. No Party shall voluntarily assign or transfer this Agreement or any portion thereof, nor any of the obligations or rights hereunder, without the prior written consent and approval of the other Party; provided, however, that approval of an assignment of this Agreement to a financial institution by the Seller in connection with the financing of the Facility shall not be unreasonably withheld by the Department.

Section 8.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their

application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 8.10. Relationship of the Parties.

(a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the Parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

Section 8.11. No Agency. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

Section 8.12. Third Party Beneficiaries. This Agreement shall not be construed to create any rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein.

Section 8.13. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 8.14. Notices. All formal notice, demand or request provided for in this Agreement shall be made in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the Parties to the addresses set forth in Appendix A. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses or add additional noticed Parties by providing notice of same in accordance herewith.

Section 8.15. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, shall either Party be liable to the other Party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise.

Section 8.17. Headings. The headings contained in this Agreement are solely for the convenience of the Parties and should not be used or relied upon in any manner in the construction or interpretation of this Agreement.

Section 8.18. Further Assurances. Each Party agrees to execute and deliver such other instruments and documents and to take such other actions as may be reasonably necessary to

complete performance hereunder and otherwise to further the purposes and intent of this Agreement.

Section 8.19. Application of Government Code and the Public Contracts Code. Pursuant to Section 80014(b) of the Water Code, the Department hereby determines that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement.

Section 8.20. Novation. Notwithstanding the foregoing limitations on assignment, at any time after execution of this Agreement, the Seller shall, upon the written request of Department, enter into a Replacement Agreement (as defined herein) as may be agreed to by a Qualified Electric Corporation (as defined herein). This Agreement shall terminate upon the effective date of such Replacement Agreement. The occurrence of the effective date of the Replacement Agreement shall constitute a novation that shall relieve Department of any liability or obligation arising after the date of termination of this Agreement. Such Replacement Agreement shall include language to the effect that it is a Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration. The effectiveness of such Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the Public Utilities Code with respect to such Replacement Agreement and shall have issued an order determining that the charges under such Replacement Agreement are just and reasonable. The effectiveness of such Replacement Agreement shall also be subject to the condition precedent that the nationally recognized bond counsel selected by the Seller (subject to the reasonable approval of the Department) deliver an opinion (which shall include only those assumptions and qualification which are customary in final approving opinions with respect to tax exempt municipal bond financings) to the effect that the novation and execution of the Replacement Agreement contemplated by this section will not in and of itself negatively impact the exclusion from gross income of interest on any tax-exempt obligations (if any) which have been issued to finance the costs of the Facility. Notwithstanding the foregoing, in the event that the Department directs that the Seller enter into a Replacement Agreement in accordance with this Section and the other requirements of this section relating to PUC actions have been met, the Seller shall have the right to avoid such Replacement Agreement and terminate this Agreement by providing written notice thereof to the Department at least 60 days prior to the proposed effective date of the Replacement Agreement. As a condition to exercising such right of termination, the Seller shall be required to pay to the Department the amounts specified in Appendix D relating to the year in which the termination occurs.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the 18th day of August, 2004.

STATE OF CALIFORNIA DEPARTMENT OF
WATER RESOURCES, separate and apart from its
powers and responsibilities with respect to the State
Water Resources Development System

By: _____

Name: Peter Garris

Title: Deputy Director

KINGS RIVER CONSERVATION DISTRICT

By: _____

Name: David Orth

Title: General Manager

Addresses

Seller

Kings River Conservation District
4886 E. Jensen Avenue
Fresno, California 93725-1899
Attn: General Manager, David Orth
Phone: (559) 237-5567
Fax: (559) 237-5560

Wire Transfer Details:

Payments

Attn: Director of Finance
Phone: (559) 237-5567
Fax: (559) 237-5560

Authorized Representative

David Orth – General Manager

Department

All Notices:

California Department of Water Resources/CERS

Street:

3310 El Camino Avenue, Suite 120

City, State, Zip:

Sacramento, Calif. 95821

Attn: Executive Manager Power Systems
Phone: (916) 574-0339
Facsimile: (916) 574-2152

Duns: _____

Federal Tax ID No. :

Billing Address:

Department of Water Resources/CERS

Attn: Doreen Singh
3310 El Camino Avenue, Suite 120
Sacramento, Calif. 95821
Phone: (916) 574-0309
Facsimile: (916) 574-1239

Notice Address:

Department of Water Resources/CERS
Attn: Contracts Payable
3310 El Camino Avenue, Suite 120
Sacramento, Calif. 95821
Phone: (916) 574-2733
Facsimile: (916) 574-2512

Authorized Representative:

Pete Garris – Deputy Director

Scheduling:

To be provided in Operating Procedures

Payments:

Attn: Cash Receipts Section
Phone: (916) 653-6892
Facsimile: (916) 654-9882

Major Milestones

If CEC Approval Required for Facility:

<u>Milestone</u>	<u>Target Date</u>
Obtain Site Control	9/1/03
Submit SPPE Application	12/31/03
EPC Contract Executed	5/1/04
Receive SPPE Approval	6/1/04
Management Agreement Executed	7/1/04
Completion of Gas Interconnection Agreement	7/1/04
Completion of Electric Interconnection Agreement	5/1/04
Receive Air Quality Permit	7/1/04
Anticipated Closing Date of Initial Bonds	9/7/04
EPC Notice to Proceed	9/7/04
Commercial Operation Date	5/1/05

**PERFORMANCE TESTING PROCEDURES
FOR COMMERCIAL OPERATIONS**

1. Purpose of the Performance Test.

Performance testing of the Facility will consist of an initial performance test prior to Commercial Operation, and subsequent performance tests. The initial performance test shall be the performance test performed for purposes of Facility acceptance by the Seller under the EPC Contract. The Seller shall coordinate with the Department as to the date on which Seller shall perform an initial performance test in accordance with this Appendix C to determine the Rated Capacity as described in Section 2.03 of this Agreement and the Test Heat Rate. Periodically throughout the Term of this Agreement, the Seller will perform additional performance tests. The purpose of this Appendix C is to provide the guidelines under which these performance tests will be conducted.

2. Initial Performance Test.

The Seller shall prepare and submit its written, proposed test procedure and schedule for the initial performance test to Department no less than thirty (30) business days before the proposed test date for Department's acceptance and, within ten (10) business days of such submittal, Department and the Seller shall meet to review and discuss the proposed test procedure and schedule.

Within five (5) business days of such meeting or waiver thereof, Department shall submit either its written acceptance or comments, including the reasons for such comments, on the proposed test procedure and schedule to the Seller. The failure by Department to submit such written acceptance or comment within the required time shall constitute acceptance of the proposed test procedure and schedule by Department. Other than this deemed approval by the Department, the parties shall mutually agree on the final test procedure that shall be the approved test procedure.

The Seller shall provide written notice to Department of changes, if any, to the approved test procedure and schedule and the reason(s) therefore as soon as reasonably practicable, such changes being subject to Department's approval.

The proposed and approved test procedures shall comply with the requirements of Section 3 of the Performance Test Code ASME PTC 22-1997 for Gas Turbine Power Plants ("PTC 22").

The Seller shall give the Department five business days notice before the commencement of the performance test. A Rated Capacity Test and a Heat Rate Test of each Unit shall

be performed. Seller shall be responsible for all costs associated with this performance test, other than fuel costs which shall be borne by the Department.

3. **Annual Performance Tests.**

Annually, in accordance with Section 2.03, a Rated Capacity Test, a Heat Rate Test, shall be performed between June 1 and June 30, or at another time to be mutually agreed. The Seller shall provide 10 business days notice to the Department before the commencement of this performance test. Seller shall be responsible for all costs associated with this performance test, other than fuel costs which shall be borne by the Department. The Seller shall prepare and submit its written, proposed test procedure and schedule for the Rated Capacity Test and the Heat Rate Test no less than thirty (30) business days before the proposed test date for Department's acceptance and, within ten (10) business days of such submittal, Department and the Seller shall meet to review and discuss the proposed test procedure and schedule. Department and the Seller may waive such meeting by mutual agreement

Periodically in accordance with Section 2.02 (c), the Department may call for additional performance tests in addition to the required annual test for the determination of Rated Capacity. The incremental costs of this test shall be borne by the Department. The Seller shall give the Department 10 business days notice before the commencement of the performance test.

4. **Annual Performance Test Conditions.**

- A. **Start-Up and Stabilization Period.** Prior to the start of the test, the Facility shall be started, synchronized and brought to full load using normal start procedures and then operated continuously at full load for as long as it is necessary, but in no case for no less than one hour, for all measured parameters to achieve stable, normal conditions such that any variations in such parameters will be within the tolerances provided in Table 3.3.3 of PTC 22.
- B. **Operating Personnel.** The Facility shall be operated by Seller's operating personnel .
- C. **Duration.** The duration of the test shall be four continuous (4) hours, which shall commence only upon satisfactory completion of the Start-Up and Stabilization Period.
- D. **Operating Protocols and Conditions.** At all times, the Facility shall be operated in compliance with the approved test procedures, Prudent Industry

Practice and all operating protocols recommended, required or established by (i) the manufacturer or supplier of the Facility's equipment (ii) the firm(s) that engineered and designed the Facility and (iii) the contractor(s) that constructed the Facility.

At no time during the test shall the Facility be subject to disruptions or abnormal conditions including, but not limited to, any (i) unstable conditions, (ii) equipment, operating, or regulatory restrictions, or (iii) changes in load from full load other than those fluctuations naturally arising from variations in ambient temperature.

- E. **Applicable Laws and Permits.** At all times, the Facility shall be in compliance with all applicable laws, regulations and permits, including, but not limited to, those governing safety, air and water emissions.
- F. **Data Collection.** At a minimum, the following parameters will be measured and recorded simultaneously at no greater than five (5) minute intervals except for fuel samples:
1. **Instantaneous ambient relative humidity (%)**
 2. **Instantaneous ambient barometric pressure (inches Hg)**
 3. **Instantaneous ambient temperature (°F)**
 4. **Net output since last measurement at the Energy Delivery Point (kWh)**
 5. **CEMS data required per air permit**
 6. **Turbine speed (rpm)**
 7. **Turbine temperatures (°F)**
 8. **Turbine pressures (psig)**
 9. **Fuel flow at the utility meter.**
 10. **Fuel samples once per hour to be tested by an independent laboratory.**

Upon mutual agreement of the Parties, additional parameters may be measured and recorded simultaneously with the required parameters.

- G. **Instrumentation and Metering.** The Seller shall provide all instrumentation, metering and data collection equipment required to perform the test. Wherever possible, the instrumentation, metering and data collection equipment that will be used after the Facility achieves Commercial Operation for monitoring and controlling the operation of the Facility and collecting the data required for the Seller to prepare and submit its monthly invoice to Department shall be used for the test. The Seller shall calibrate or cause to be calibrated all such instrumentation, metering and data collection equipment no more than three (3)

months prior to the date of the test. All electrical metering equipment shall utilize the plant's installed CAISO metering equipment calibrated to CAISO standards.

5. Determination of Rated Capacity and Heat Rate and Creation of Ambient Facility Output Table.

The Seller shall perform the Rated Capacity Test(s) for each combustion turbine Unit or for the entire Facility. The determination of plant auxiliary loads for the individual combustion turbine tests shall be either by direct measurement with only one of the Units in operation or by a method of prorating the auxiliary loads to be mutually agreed upon by the Parties.

The Seller shall perform the calculation of Rated Capacity and the Test Heat Rate correcting the measured data to the following adjustments:

The net output for each data interval shall be adjusted to Contract Conditions by first adjusting for differences, if any, between the ambient relative humidity for that data interval and Contract Conditions using the performance curves provided by the manufacturer then adjusting that result for differences, if any, between the ambient barometric pressure for that data interval and Contract Conditions using the performance curves provided by the manufacturer, and, finally, adjusting that result for differences, if any, between the ambient temperature for that data interval and Contract Conditions using the manufacturer's performance curve.

Using the resulting net output data from this sequential, three-step adjustment process, the net kW output at Contract Conditions at the Energy Delivery Point shall be calculated for each of the sixteen (16) consecutive fifteen (15) minute intervals comprising the test. The average of the sixteen average net kW values thus calculated shall be the Rated Capacity.

The Test Heat Rate shall be calculated by taking the fuel flow for each interval and adjusting to Contract Conditions by first adjusting for differences, if any between the ambient barometric pressure at site elevation for that data interval and Contract Conditions using the performance curves provided by the manufacturer, and, finally, adjusting that result for differences, if any, between the ambient temperature for that data interval and Contract Conditions using the manufacturer's performance curve

Using the resulting adjusted fuel flow data from this sequential, three-step adjustment process, the average fuel flow at Contract Conditions at the Energy Delivery Point shall be calculated for each of the sixteen (16) consecutive fifteen (15) minute intervals comprising the test. The average of the sixteen average adjusted fuel flow values shall be calculated and used as the corrected to Contract Conditions fuel flow. This corrected fuel

flow, the average of the results of the fuel testing laboratory samples for fuel heat content, and the Rated Capacity shall be used to calculate the Test Heat Rate in Btu kw-hr/(HHV).

Using the manufacturer's performance curve, the Rated Capacity as calculated above for the Facility, comprising those Units meeting the requirements of Section 4.03, shall be used to generate an "Ambient Facility Output Table" relating expected Facility output (in MW) to ambient temperature, such that the Rated Capacity of the Facility shall be the expected Facility output at Contract Conditions in the Ambient Facility Output Table, and the expected Facility output at other ambient temperatures shall relate to Rated Capacity in the same proportion as the points on the manufacturer's performance curve relate to that curve at Contract Conditions. Barometric pressure corrections shall be corrected to site elevation standard pressure.

6. **Test Reports.** Within five (5) business days after the completion of the performance test, the Seller shall prepare and submit to Department a written report of the test in accordance with Section 6 of PTC 22. At a minimum, the report shall include (i) the approved test procedure, (ii) a record of the personnel present for the test whether serving in an operating, testing, monitoring or other such participatory role, (iii) documentation of the satisfactory completion of the start-up and stabilization period, (iv) a record of any unusual or abnormal conditions or events that occurred during the test and any actions taken in response thereto, (v) the measured data, (vi) a verification of the validity of the test in accordance with Section 3.5.1 of PTC 22, (vii) the adjusted data with supporting calculations, (viii) Rated Capacity with supporting calculations, and (ix) the Seller's statement of either the Seller's acceptance of the test or the Seller's rejection of the test and reason(s) therefore. Within ten (10) business days after receipt of such report, Department shall notify the Seller in writing of either Department's acceptance of the test or Department's rejection of the test and reason(s) therefore.

7. **Test Acceptance and Re-Testing.**

If the Seller and Department both accept a test, the Rated Capacity and Test Heat Rate shall be updated to reflect the results of such test effective upon the first day of the month following the month in which Department receives the Seller's test report.

If the Seller is unable to complete a test for any reason, it shall be permitted to reconduct such test.

After the successful completion of a test, Seller has the right, for any reason, to conduct a maximum of one (1) retest.

8. **Cost and Revenue.**

For all tests prior to Commercial Operation, the Energy produced by the Seller shall be scheduled by the Seller into the CAISO controlled grid and Seller shall be responsible for all costs associated with such tests, other than fuel costs which shall be borne by the Department. The Department shall receive all revenues from the sale of such Energy. It is agreed by the Seller and the Department that the maximum number of hours of unit operation prior to the Commercial Operation Date shall not exceed 200 hours. If Seller believes that this number will likely be exceeded, Seller shall make a timely detailed request to the Department for additional operating hours, and the Department, at its sole discretion, may approve such a request.

For all tests after Commercial Operation, Seller shall be responsible for all costs associated with such tests, other than fuel costs which shall be borne by the Department. The Department shall receive all revenues from the sale of such Energy. The Seller and the Department shall coordinate so that the Department is able to schedule such tests during periods in which Department has Dispatched the Facility to operate.

Appendix D

DEPARTMENT COMPENSATION PAYMENT SCHEDULE

Year	Turbine Value	Reserve Accounts		Total Department Compensation Payment
		Capacity Payment Credit ¹	Operating Reserve	
2006	\$10,740,000.00	\$630,000.00	\$200,000.00	\$11,570,000.00
2007	\$9,940,000.00	\$1,260,000.00	\$400,000.00	\$11,600,000.00
2008	\$9,130,000.00	\$1,890,000.00	\$600,000.00	\$11,620,000.00
2009	\$8,330,000.00	\$2,520,000.00	\$800,000.00	\$11,650,000.00
2010	\$7,520,000.00	\$3,150,000.00	\$1,000,000.00	\$11,670,000.00
2011	\$6,720,000.00	\$3,780,000.00	\$1,200,000.00	\$11,700,000.00
2012	\$5,910,000.00	\$4,410,000.00	\$1,400,000.00	\$11,720,000.00
2013	\$5,110,000.00	\$5,040,000.00	\$1,600,000.00	\$11,750,000.00
2014	\$4,300,000.00	\$5,670,000.00	\$1,800,000.00	\$11,770,000.00
2015 and thereafter	\$3,500,000.00	***	\$2,000,000.00	\$5,500,000.00

*** \$6.3 Million Debt Service Reserve applied to the debt service component of the Department's capacity payment.

¹ Preliminary values based on assumed Debt Service Reserve Fund sizing of \$6.3 million. To be finalized at time of execution of the Letter Agreement pursuant to Section 3.09.